

## 48A C.J.S. Judges § 223

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### VIII. Liabilities

#### A. General Considerations

### § 223. Criminal responsibility

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Judges](#)  38

**There is no judicial immunity from criminal liability, and a judicial officer, violating a criminal statute, is held to the same responsibility as any citizen.**

Except as far as it has been changed by particular statutes<sup>1</sup> or by some constitutional provision,<sup>2</sup> as a general rule, there is no judicial immunity from criminal liability.<sup>3</sup> Statutory and constitutional provisions dealing with the discipline of judges for misconduct in office do not immunize judicial officers from criminal prosecution.<sup>4</sup> A judicial officer, violating a criminal statute, is held to the same responsibility as any citizen.<sup>5</sup> So, any judicial officer who acts fraudulently or corruptly is responsible criminally,<sup>6</sup> whether he or she acts under the law or without the law.<sup>7</sup>

However, a judicial officer, when required to exercise judgment or discretion, is not liable criminally for any error which he or she commits provided he or she acts in good faith.<sup>8</sup>

Accordingly, a judge is not subject to prosecution for refusing to enforce a law the judge believes is unconstitutional.<sup>9</sup>

Frequently, judges are by force of statute made subject to indictment for willful neglect of official duty,<sup>10</sup> for malfeasance in office,<sup>11</sup> or for certain unlawful acts done in their official capacity,<sup>12</sup> such as oppression<sup>13</sup> or requiring excessive bail.<sup>14</sup> The acquisition of prohibited interests by a judge is also a punishable offense under some statutes.<sup>15</sup> To threaten to use the power of the judge's office to ruin another for personal gain may constitute a crime.<sup>16</sup>

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## Footnotes

- 1 Ky.—*Com. v. Tartar*, 239 S.W.2d 265 (Ky. 1951).
- 2 Ky.—*Com. v. Tartar*, 239 S.W.2d 265 (Ky. 1951).
- 3 Pa.—*L.J.S. v. State Ethics Com'n*, 744 A.2d 798 (Pa. Commw. Ct. 2000).  
Tex.—*B.K. v. Cox*, 116 S.W.3d 351 (Tex. App. Houston 14th Dist. 2003).
- 4 Cal.—*Boags v. Municipal Court*, 197 Cal. App. 3d 65, 242 Cal. Rptr. 681 (2d Dist. 1987).
- 5 Cal.—*Frazier v. Moffatt*, 108 Cal. App. 2d 379, 239 P.2d 123 (2d Dist. 1951).  
  
**Violation of civil rights**  
A state judge may be found criminally liable for a violation of civil rights.  
U.S.—*Dennis v. Sparks*, 449 U.S. 24, 101 S. Ct. 183, 66 L. Ed. 2d 185 (1980).
- 6 Ala.—*McDonald v. State*, 57 Ala. App. 529, 329 So. 2d 583 (Crim. App. 1975).  
Mo.—*State v. Young*, 504 S.W.2d 672 (Mo. Ct. App. 1974).  
Neb.—*McFarland v. State*, 172 Neb. 251, 109 N.W.2d 397 (1961).
- 7 Neb.—*McFarland v. State*, 172 Neb. 251, 109 N.W.2d 397 (1961).
- 8 Ill.—*People v. Ferguson*, 20 Ill. 2d 295, 170 N.E.2d 171 (1960).  
Neb.—*McFarland v. State*, 172 Neb. 251, 109 N.W.2d 397 (1961).
- 9 Fla.—*Clayton v. Willis*, 489 So. 2d 813 (Fla. 5th DCA 1986).
- 10 Del.—*In re Tull*, 25 Del. 126, 2 Boyce 126, 78 A. 299 (Super. Ct. 1910).
- 11 La.—*State v. Perez*, 464 So. 2d 737 (La. 1985).
- 12 Tenn.—*Sams v. State*, 210 Tenn. 16, 356 S.W.2d 273 (1962).
- 13 Del.—*In re Tull*, 25 Del. 126, 2 Boyce 126, 78 A. 299 (Super. Ct. 1910).

- 14 N.H.—*Evans v. Foster*, 1 N.H. 374, 1819 WL 470 (1819).
- 15 Ark.—*State v. Anderson*, 200 Ark. 588, 139 S.W.2d 682 (1940).
- 16 U.S.—*In re Rochkind*, 128 B.R. 520 (Bankr. E.D. Mich. 1991).

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